

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TED BLACKMON,) Case No.: 1:23-cv-00497-KES-HBK (HC)
Petitioner,)
v.) ORDER ADOPTING FINDINGS AND
CHRISTIAN PFEIFFER,) RECOMMENDATIONS, DENYING
Respondent.) PETITIONER'S MOTION TO STAY,
) GRANTING RESPONDENT'S MOTION TO
) DISMISS, DENYING PETITION FOR WRIT OF
) HABEAS CORPUS, DECLINING TO ISSUE
) CERTIFICATE OF APPEALABILITY, AND
) DIRECTING CLERK OF COURT TO CLOSE
) CASE
)
) (Docs. 1, 12, 18, 19, 22)

Petitioner Ted Blackmon is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Doc. 1. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 17, 2024, the assigned magistrate judge issued findings and recommendations recommending that respondent's motion to dismiss be granted, and the petition be dismissed for failure to state a cognizable federal habeas claim. Doc. 18. Those findings and recommendations were served upon all parties and contained notice that any objections thereto were to be filed within fourteen (14) days after service. In addition, the parties were "advised that failure to file objections within the specified time may result in the waiver of rights on appeal." *Id.*, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014); *Baxter v. Sullivan*, 923 F.2d 1391,

1 1394 (9th Cir. 1991). Petitioner did not file objections, and the deadline to do so has expired.
2 However, in response petitioner filed a motion stay. Doc. 19. Respondent filed an opposition to
3 the motion to stay, and petitioner filed a response. Docs. 20, 21.

4 On July 3, 2024, the assigned magistrate judge issued findings and recommendations
5 recommending that petitioner's motion to stay be denied. Doc. 22. Those findings and
6 recommendations were served upon all parties and contained notice that any objections thereto
7 were to be filed within fourteen (14) days after service. In addition, the parties were "advised that
8 failure to file objections within the specified time may result in the waiver of rights on appeal."
9 *Id.*, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014); *Baxter v. Sullivan*, 923
10 F.2d 1391, 1394 (9th Cir. 1991). Petitioner did not file objections, and the deadline to do so has
11 expired.

12 In accordance with the provisions of 28 U.S.C. § 636 (b)(1), the court has conducted a de
13 novo review of the case. Having carefully reviewed the file, the court concludes that the
14 magistrate judge's findings and recommendations are supported by the record and proper
15 analysis.

16 A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a
17 district court's denial of his petition, and an appeal is only allowed in certain circumstances.
18 *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C. § 2253. If a court denies a habeas
19 petition on the merits, the court may issue a certificate of appealability only "if jurists of reason
20 could disagree with the district court's resolution of [the petitioner's] constitutional claims or that
21 jurists could conclude the issues presented are adequate to deserve encouragement to proceed
22 further." *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). While the
23 petitioner is not required to prove the merits of his case, he must demonstrate "something more
24 than the absence of frivolity or the existence of mere good faith on his . . . part." *Miller-El*, 537
25 U.S. at 338.

26 The court finds that reasonable jurists would not find the court's determination that the
27 petition should be denied debatable, wrong, or deserving of encouragement to proceed further.
28 Petitioner has not made the required substantial showing of the denial of a constitutional right.

1 Therefore, the court declines to issue a certificate of appealability.

2 Accordingly:

- 3 1. The findings and recommendations issued on May 17, 2024, Doc. 18, are
4 ADOPTED in full;
- 5 2. The findings and recommendations issued on July 3, 2024, Doc. 22, are
6 ADOPTED in full;
- 7 3. Petitioner's motion to stay, Doc. 19, is DENIED;
- 8 4. Respondent's motion to dismiss, Doc. 12, is GRANTED;
- 9 5. The petition for writ of habeas corpus, Doc. 1, is DENIED;
- 10 6. The court declines to issue a certificate of appealability;
- 11 7. The Clerk of the Court is directed to terminate any pending deadlines/motions and
12 CLOSE the case.

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14 IT IS SO ORDERED.

15 Dated: August 8, 2024



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17 UNITED STATES DISTRICT JUDGE
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